

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1471

Introduced by Assembly Member Perea

February 27, 2015

An act to amend ~~Section~~ *Sections 201, 2601, and 17701.09* of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL’S DIGEST

AB 1471, as amended, Perea. Business entity name reservations.

~~Existing~~

(1) Existing law, the General Corporations law, authorizes Law, the Social Purpose Corporations Act, and the California Revised Uniform Limited Liability Company Act, authorize the Secretary of State, upon payment of a fee by the applicant, to issue a certificate of reservation of any name, not otherwise prohibited.

The bill would make a nonsubstantive ~~change~~. change to the cross-reference of the requirement to pay a fee by the applicant in these laws.

(2) The General Corporation Law and the Social Purpose Corporations Act limits the Secretary of State from issuing a certificate reserving any name that is likely to mislead the public or the same name for 2 or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person, partnership, firm, corporation, or social purpose corporation, as applicable.

This bill would specify that the Secretary of State may reserve that name to the use or benefit of a person, as provided.

(3) The Social Purpose Corporations Act does not prohibit the Secretary of State from filing articles for a social purpose corporation

subject to the Banking Law setting forth a name in which “bank,” “trust,” “trustee,” or related words appear, if the articles are endorsed with the approval of the Commissioner of Financial Institutions. Existing law reorganized the Department of Financial Institutions and the Commissioner of Financial Institutions into the Department of Business Oversight headed by a Commissioner of Business Oversight.

This bill would add another basis under which the Secretary of State is not prohibited from filing articles for a social purpose corporation subject to the Banking Law setting forth a name in which “bank,” “trust,” “trustee,” or related words appear, and would change the name of the Commissioner of Financial Institutions to the Commissioner of Business Oversight.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 201 of the Corporations Code is amended
2 to read:
3 201. (a) The Secretary of State shall not file articles setting
4 forth a name in which “bank,” “trust,” “trustee,” or related words
5 appear, unless the certificate of approval of the Commissioner of
6 Business Oversight is attached thereto. This subdivision does not
7 apply to the articles of any corporation subject to the Banking Law
8 on which is endorsed the approval of the Commissioner of Business
9 Oversight.
10 (b) The Secretary of State shall not file articles which set forth
11 a name which is likely to mislead the public or which is the same
12 as, or resembles so closely as to tend to deceive, the name of a
13 domestic corporation, the name of a foreign corporation which is
14 authorized to transact intrastate business or has registered its name
15 pursuant to Section 2101, a name which a foreign corporation has
16 assumed under subdivision (b) of Section 2106, a name which will
17 become the record name of a domestic or foreign corporation upon
18 the effective date of a filed corporate instrument where there is a
19 delayed effective date pursuant to subdivision (c) of Section 110
20 or subdivision (c) of Section 5008, or a name which is under
21 reservation for another corporation pursuant to this title, except
22 that a corporation may adopt a name that is substantially the same
23 as an existing domestic corporation or foreign corporation which

1 is authorized to transact intrastate business or has registered its
2 name pursuant to Section 2101, upon proof of consent by such
3 domestic or foreign corporation and a finding by the Secretary of
4 State that under the circumstances the public is not likely to be
5 misled.

6 (c) The use by a corporation of a name in violation of this
7 section may be enjoined notwithstanding the filing of its articles
8 by the Secretary of State.

9 (d) Any applicant may, upon payment of the fee prescribed
10 therefor in Article 3 (commencing with Section 12180) of Chapter
11 3 of Part 2 of Division 3 of Title 2 of the Government Code, obtain
12 from the Secretary of State a certificate of reservation of any name
13 not prohibited by subdivision (b), and upon the issuance of the
14 certificate the name stated therein shall be reserved for a period
15 of 60 days. The Secretary of State shall not, however, issue
16 certificates reserving the same name for two or more consecutive
17 60-day periods to the same applicant or for the use or benefit of
18 the same ~~person, partnership, firm or corporation;~~ *person*; nor shall
19 consecutive reservations be made by or for the use or benefit of
20 the same ~~person, partnership, firm or corporation~~ *person*; of names
21 so similar as to fall within the prohibitions of subdivision (b).

22 *SEC. 2. Section 2601 of the Corporations Code is amended to*
23 *read:*

24 2601. (a) The Secretary of State shall not file articles setting
25 forth a name in which “bank,” “trust,” “trustee,” or related words
26 appear, unless the certificate of approval of the Commissioner of
27 ~~Financial Institutions~~ *Business Oversight* is attached to the articles.
28 This subdivision does not apply to the articles of any social purpose
29 corporation subject to the Banking Law on which is endorsed the
30 approval of the Commissioner of ~~Financial Institutions.~~ *Business*
31 *Oversight or to which a certificate of approval of the Commissioner*
32 *of Business Oversight is attached to the articles.*

33 (b) (1) The Secretary of State shall not file articles that set forth
34 a name that is likely to mislead the public or that is the same as,
35 or resembles so closely as to tend to deceive, the name of a
36 domestic corporation, the name of a domestic social purpose
37 corporation, or the name of a foreign corporation that is authorized
38 to transact intrastate business or has registered its name pursuant
39 to Section 2101, a name that a foreign corporation has assumed
40 under subdivision (b) of Section 2106, a name that will become

1 the record name of a corporation or social purpose corporation or
2 a foreign corporation upon the effective date of a filed corporate
3 instrument where there is a delayed effective date pursuant to
4 subdivision (c) of Section 110 or subdivision (c) of Section 5008,
5 or a name that is under reservation for another corporation or social
6 purpose corporation pursuant to this title, except that a social
7 purpose corporation may adopt a name that is substantially the
8 same as an existing corporation or social purpose corporation,
9 foreign or domestic, which is authorized to transact intrastate
10 business or has registered its name pursuant to Section 2101, upon
11 proof of consent by the domestic or foreign corporation or social
12 purpose corporation and a finding by the Secretary of State that
13 under the circumstances the public is not likely to be misled. The
14 use by a social purpose corporation of a name in violation of this
15 section may be enjoined notwithstanding the filing of its articles
16 by the Secretary of State.

17 (2) A corporation formed pursuant to this division before
18 January 1, 2015, may elect to change its status from a flexible
19 purpose corporation to a social purpose corporation by amending
20 its articles of incorporation to change its name to replace “flexible
21 purpose corporation” with “social purpose corporation” and to
22 replace the term “flexible purpose corporation” with “social
23 purpose corporation” as applicable in any statements contained in
24 the articles. For any flexible purpose corporation formed prior to
25 January 1, 2015, that has not amended its articles of incorporation
26 to change its status to a social purpose corporation, any reference
27 in this division to social purpose corporation shall be deemed a
28 reference to “flexible purpose corporation.”

29 (c) Any applicant may, upon payment of the fee prescribed in
30 *Article 3 (commencing with Section 12180) of Chapter 3 of Part*
31 *2 of Division 3 of Title 2 of the Government Code*, obtain from the
32 Secretary of State a certificate of reservation of any name not
33 prohibited by subdivision (b), and upon the issuance of the
34 certificate the name stated in the certificate shall be reserved for
35 a period of 60 days. The Secretary of State shall not, however,
36 issue certificates reserving the same name for two or more
37 consecutive 60-day periods to the same applicant or for the use or
38 benefit of the same ~~person, partnership, firm, corporation, or social~~
39 ~~purpose corporation.~~ *person*. No consecutive reservations shall be
40 made by or for the use or benefit of the same ~~person, partnership,~~

1 ~~firm, corporation, or social purpose corporation~~ *person* of names
2 so similar as to fall within the prohibitions of subdivision (b).

3 *SEC. 3. Section 17701.09 of the Corporations Code is amended*
4 *to read:*

5 17701.09. (a) Upon payment of the fee prescribed by Section
6 ~~12190~~ *in Article 3 (commencing with Section 12180) of Chapter*
7 *3 of Part 2 of Division 3 of Title 2 of the Government Code*, a
8 person may apply to reserve the exclusive use of the name of a
9 limited liability company or foreign limited liability company,
10 including an alternative name for a foreign limited liability
11 company whose name is not available. If the Secretary of State
12 finds that the name applied for is available, it shall reserve the
13 name for the applicant's exclusive use for up to 60 days and issue
14 a certificate of reservation. The Secretary of State shall not issue
15 certificates reserving the same name for two or more consecutive
16 60-day periods to the same applicant or for the use or benefit of
17 the same person; nor shall consecutive reservations be made by
18 or for the use or benefit of the same person for a name so similar
19 as to fall within the prohibitions of subdivision (b) of Section
20 17701.08.

21 (b) The owner of a name reserved for a limited liability company
22 or foreign limited liability company may transfer the reservation
23 to another person by delivering to the Secretary of State a signed
24 notice of the transfer which states the reserved name and the name
25 and address of the transferee.